

### **Authority of Executive Committee to Determine Allowable Expenses**

The Solicitor's Opinion upheld the authority of the SNPLMA Executive Committee to determine which necessary expenses, regardless of whether they are direct or indirect costs, are "permissible" for payment from the SNPLMA Special Account. The Executive Committee has authorized certain specific necessary expenses and certain categories of "Other Necessary Expenses" (see Appendix B-1 to B-8 for estimated expense sheets and appendix B-9 for examples of "Other Necessary Expenses"). Disputes between any agency/entity and the SNPLMA Division over whether or not a requested expense is authorized will be resolved by the Executive Committee.

### **Payments from the Special Account**

The Solicitor's Opinion also provided recommendations regarding payments from the SNPLMA and FLTFA special accounts to Federal agencies. The opinion advised that SNPLMA does not authorize "advance payments." Further, although the SNPLMA does not include a general authority to utilize reimbursement of funds, reimbursement may be utilized under the Economy Act if applicable. The Solicitor advised that the Executive Committee revise the SNPLMA Implementation Agreement to provide for payment of an Agency's necessary project expenses without use of the reimbursement mechanism and that "payments for approved projects should be made at logical stages in the life of a project while it is being implemented."

Project reimbursements/payments are made to the eligible agency/entity for which the projects were approved with one exception. That exception is payment for consultation with the Fish and Wildlife Service under the Endangered Species Act. This consultation is required for many projects across all project categories. Due to the extensive number of required consultations, funds for the Endangered Species Act consultation will be transferred directly to the FWS on a project-by-project basis following the transfer process below. The agencies/entities and FWS will identify those projects requiring such consultation and provide an estimate of the cost of the consultation as a separate line item on the Estimated Necessary Expense Form (Appendix B-1 to B-8), so that the SNPLMA Division can effect the transfer in a manner that allocates consultation costs to the appropriate projects.

### **VIII. SPECIAL ACCOUNT "1151" TRANSFER PROCESS FOR ALL PROJECT CATEGORIES**

In April 2005, in response to the Solicitor's Opinion described above, the Director, Office of Budget, Department of the Interior (DOI), sent a memorandum to the Chief, Interior Branch, Office of Management and Budget (OMB), stating that the Department of Interior and the U.S. Forest Service requested an allocation account, more commonly termed a parent/child account, to be established for the SNPLMA program. This action was initiated after managers from both agencies reviewed the Solicitor's opinion and their budget execution options and statutory authority and concluded that the SNPLMA program should be classified as an allocation account, i.e., meaning "a delegation, authorized in law, by one agency of its authority to obligate budget authority and outlay funds to another agency. When an agency makes such a delegation,

the Department of the Treasury (Treasury) establishes a subsidiary account called a ‘transfer appropriation account’, and the receiving agency may obligate up to the amount included in the account.”

The Treasury set up the following allocation accounts specifically for the purpose of allowing BLM to make “1151 Transfers” and the FWS, NPS, and FS to receive transferred funds. These are the only agencies currently eligible to participate in the funds transfer process.

Department of the Interior:

14X5232.16 Fish and Wildlife Service (child)

14X5232.10 National Park Service (child)

14X5232 Bureau of Land Management (parent)

Department of Agriculture:

12-14X5232 U.S. Forest Service (child)

If any other agency(ies) or entities becomes eligible through OMB or another Federal agency to receive transferred SNPLMA funds, they would be allowed to participate in this process without further revision to this Implementation Agreement. Similarly, any revision necessary to the published transfer process to include such additional eligible entities would be made without need for further Executive Committee approval. In particular, this process is intended to include those Federal agencies identified in Public Law 108-108, Section 342, regarding Lake Tahoe Restoration projects, after two conditions have been met. Those conditions are (1) execution of a “cooperative [sic] agreement” as required by Public Law 108-108 between the Secretary of Agriculture and the Federal agencies conducting projects under Public Law 108-108, Section 342, and (2) the Department of Treasury establishing the necessary allocation accounts.

This transfer policy allows for agencies to convert projects approved in Round 1-5 from reimbursement to transfer, which, in some cases, will result in a single project being partially funded under reimbursements and partially funded by transfer. Projects approved in Round 6 and forward will be funded either by Transfer or through the “Obligation and Reimbursement” process described in the next section, but not both.

Agencies have one year from the notification of availability of funds to initiate the transfer process. The first transfer shall take place either during the quarter the transfer is initiated or the quarter immediately thereafter. The transfer process may be modified somewhat from time to time in order to provide clarification and greater efficiency. Such revisions will not require further Executive Committee approval.

The detailed process, procedures, and business rules for the 1151 Transfer Process can be found in Appendix L.

The February 2005 solicitor's opinion determined that SNPLMA funds are appropriated funds and specified that advance payments are prohibited unless a specific appropriation or other law authorizes it. Because SNPLMA does not authorize advance payments, agencies are expected to identify quarterly transfer amounts consistent with how much they anticipate being able to either expend or obligate during that quarter. The process outlined in Appendix L includes an explanation of provisions in the transfer request and report spreadsheets to monitor the use of transferred funds by the agencies compared to the percent completion for the project, and provides for the ability to delay future transfers until the utilization of funds and project progress become more closely aligned. These determinations would be made in consultation between the SNPLMA Division, the receiving agency, and the Partners Working Group.

The processes and requirements for requesting project modifications (additional funds, change in scope, time extensions, on-hold status, or termination) are the same for projects funded by 1151 Transfer as for projects funded through the obligation and reimbursement process described in the next section. If the policies and procedures outlined in this Implementation Agreement, including requirements for modifying projects, are not met, transfer of funds may be delayed and/or projects could even be subject to termination. The processes and requirements for modifying projects, including termination, are outlined below in Section X.

Although the next section outlines the processes and procedures for obligating funds for reimbursement as opposed to receiving transferred funds, it also contains general information on how funds are allocated to the different categories, notification of availability of funds, etc. that apply equally to projects which will be funded by 1151 Transfer.

## **IX. SPECIAL ACCOUNT OBLIGATION AND REIMBURSEMENT PROCESS FOR ALL PROJECT CATEGORIES**

This section applies to all project categories and the term "project" throughout is to be taken to mean any undertaking approved under any of the categories, including acquisition of lands and interests in land. The section describes the process associated with implementing the Secretaries' decisions for spending funds in the Special Accounts by reimbursement pursuant to the Economy Act (31 U.S.C. 1535) utilizing Intra-Governmental Orders (IGOs) or pursuant to a master cooperative agreement with a local or regional governmental entity for task orders. Projects which commenced prior to implementation of the 1151 Transfer Process described above were all funded through this process and may be completed under this reimbursement process. Projects approved in Round 6 and forward may, if in the best interest of the agency, be carried out under the reimbursement process pursuant to the Economy Act even if the agency is otherwise eligible for 1151 Transfers.

All project categories utilizing the obligation and reimbursement process shall submit reimbursement request packages at logical phases of the projects, generally considered to be quarterly or at other logical phases based on timing of contract payments, etc. as identified in the obligating document (IGO or task order) in consultation with the Program Manager for the applicable category. The reimbursement process described here is designed to ensure that funding allocated under the Acts is spent for the intended purposes. It specifies the